IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

MISC. CIVIL APPLICATION NO.50 OF 2005

Mrs. Chhaya Kiran Patel ..Petitioner.
Vs.
Kiran Arjun Patel ..Respondent.

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Ms. Madhubala Shetty for the Petitioner.
Mr. P.G. Lad for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

22nd November, 2005.

P.C. :

1. These proceedings have been instituted by the Petitioning wife for transfer of a Petition for divorce filed by the Respondent from the Court of Civil Judge, Senior Division, Silvasa to the Family Court at Bandra. Parties were married on 15th May, 2002 at Anngam, Taluka Umergam in the District of Valsad. The Applicant conceived after the marriage and it is her case that the Respondent brought her to her parents' house. The Respondent was then engaged in employment in Lakshdweep. The Applicant was advised to go to the mainland due to the lack of medical facilities. According to the Applicant, the Respondent declined to take her back and there was a demand of a residential flat and of a

vehicle. A girl child was born out of the wedlock on 21st February, 2003. The Applicant apprehended that the Respondent was about to contract a second marriage and on 8th March, 2004 she instituted a civil suit, R.C. Suit 44 of 2004 for an injunction. According to the Applicant, the First Respondent has married again and a child has been born out of the wedlock. A copy of the birth certificate has been produced at the hearing of the Misc. Civil Application. The Applicant moved proceedings on 5th May, 2004 before the Family Court at Bandra for maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1955. A criminal complaint has also been filed by the Applicant in the Court of the Metropolitan Magistrate under Section 498-A and other cognate provisions of the Penal Code. In both of these proceedings, it has been stated that the Applicant resides at Asmita Jyoti Co-operative Housing Society, at Malad, Mumbai. The Respondent has instituted proceedings for divorce on 9th August, 2004 before the Civil Judge, Senior Division, Silvasa.

2. On behalf of the Applicant it has been submitted that the Applicant has a three year old child and that she is residing at Mumbai with her father who has now retired from service. In the

circumstances, it has been submitted that it has been impossible for the Applicant to contest the proceedings at Silvasa by remaining present before that Court on the dates of hearing. On behalf of the Respondent it was submitted that the Applicant had filed a suit on 8th March, 2004 at Umergaon for an order of injunction restraining the Respondent from contracting the second marriage and hence, it has been submitted that there is no reason why the Applicant is not in a position to contest the divorce proceedings at Silvasa.

3. There is merit in the submission which has been urged on behalf of the Applicant. Counsel appearing for the Applicant has produced copies of the share certificate issued by the Asmita Jyoti Co-operative Housing Society at Malad (West) and maintenance bills in support of the submission that the Applicant's father resides at Malad. The Applicant has no other place to reside with her three year old daughter. In these circumstances, there is no merit in the submission urged on behalf of the Respondent that the Applicant is not residing in Greater Mumbai. In so far as the suit instituted at Umergaon is concerned, it has been stated on behalf of the Applicant that the Applicant was in fact not able to pursue those

proceedings as a result of the distance and commuting time involved and the suit has been dismissed. The Respondent is stated to have contracted a second marriage. Having regard to the facts and circumstances of the case, I am of the view that the continuation of the proceedings at Silvasa will seriously prejudice the right of the Applicant to pursue the divorce proceedings. The Respondent was gainfully employed at Lakshdweep. It has been stated that he has now been removed from service. I am satisfied that the Respondent will be in a position to pursue his divorce proceedings even if they are transferred to the Family Court at Mumbai. Contrarywise, the Applicant would be prejudiced in her defence if she is called upon to attend the proceedings at Silvasa. One other circumstance that may be noted is that under Section 19(5) of the Hindu Marriage Act as amended, a petition for divorce can inter alia be presented to the District Court within the local limits of whose ordinary original civil jurisdiction (i) the marriage was solemnized; or (ii) the respondent, at the time of the presentation of the petition, resides; or (iii) the parties to the marriage last resided together; or (iv) in certain specified eventualities, where the Petitioner resided on the date of the presentation of the Petition.

4. In these circumstances, the Civil Application is made absolute in terms of prayer clause (a). All the rights and contentions of the parties on merits are kept open.